

Senate File 267 - Introduced

SENATE FILE 267

BY BOLKCOM

A BILL FOR

1 An Act relating to forfeiture of property for criminal offenses
2 and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 809B.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. *"Abandoned property"* means personal property left by an
5 owner who intentionally relinquishes all rights to the control
6 of the personal property. *"Abandoned property"* does not include
7 real property.

8 2. *"Actual knowledge"* means direct and clear awareness of
9 information, a fact, or a condition.

10 3. *"Constructive knowledge"* means knowledge that is
11 imputed to family or household members of the defendant if the
12 defendant admitted guilt or was adjudicated guilty three or
13 more times for the same or similar offense, as specified in
14 statute, in the ten years prior to the alleged offense.

15 4. *"Contraband"* means goods that are unlawful to import,
16 export, or possess, including controlled substances without a
17 valid prescription.

18 5. *"Conveyance"* means a device used for transportation and
19 includes a motor vehicle, trailer, snowmobile, airplane, and
20 vessel, and any attached equipment. *"Conveyance"* does not
21 include property that is stolen or taken in violation of the
22 law.

23 6. *"Instrumentality"* means property otherwise lawful to
24 possess that is used in the furtherance or commission of an
25 offense of a law subject to forfeiture. *"Instrumentality"*
26 includes land, buildings, containers, a conveyance, equipment,
27 materials, products, a computer, computer software, a
28 telecommunications device, a firearm, ammunition, a tool,
29 money, securities, and negotiable instruments and other means
30 of exchange.

31 7. *"Law enforcement agency"* means any nonfederal police
32 force, or other local, county, or state agency that has the
33 authority under state law to engage in seizure and forfeiture.

34 8. *"Law subject to forfeiture"* means a state law that
35 carries a felony penalty and that explicitly includes

1 forfeiture as a punishment or sanction for the offense.

2 Sec. 2. NEW SECTION. **809B.2 Purpose.**

3 This chapter's purpose is to deter criminal activity by
4 reducing crime's economic incentive, increase the pecuniary
5 loss from criminal activity, protect against the wrongful
6 forfeiture of property, and ensure that only criminal
7 forfeiture is allowed in this state.

8 Sec. 3. NEW SECTION. **809B.3 Criminal forfeiture — property**
9 **subject to forfeiture.**

10 When a person is convicted of violating a law subject to
11 forfeiture, the court, consistent with this chapter, may order
12 the person to forfeit any of the following:

13 1. Property the person derived from the commission of the
14 offense.

15 2. Property directly traceable to property derived from the
16 commission of the offense.

17 3. Instrumentalities the person used in the commission of
18 the offense.

19 Sec. 4. NEW SECTION. **809B.4 Exemptions.**

20 Real property that is a homestead, a motor vehicle of less
21 than ten thousand dollars in market value, and United States
22 currency totaling two hundred dollars or less are exempt from
23 forfeiture.

24 Sec. 5. NEW SECTION. **809B.5 Contraband.**

25 A property right does not exist in contraband. Contraband
26 is subject to seizure and shall be disposed of according to
27 state law. Contraband is not subject to forfeiture under this
28 chapter.

29 Sec. 6. NEW SECTION. **809B.6 Conviction required — standard**
30 **of proof.**

31 1. Property may only be forfeited under this chapter if
32 the offense is of a law subject to forfeiture, the offense is
33 established by proof of a criminal conviction, and the state
34 establishes that the property is forfeitable under this chapter
35 by clear and convincing evidence.

1 2. This chapter does not prevent property from being
2 forfeited by plea agreement approved by the presiding criminal
3 court.

4 3. *a.* The court may waive the requirement of proof of a
5 criminal conviction if the prosecuting authority shows by a
6 preponderance of the evidence any of the following:

7 (1) The suspect died.

8 (2) The suspect was deported by the United States
9 government.

10 (3) The suspect fled the jurisdiction after being arrested,
11 charged with a crime subject to forfeiture of property, and
12 released on bail.

13 *b.* Property forfeitable under this subsection remains
14 subject to claims by innocent owners, creditors, and other
15 third parties pursuant to this chapter.

16 Sec. 7. NEW SECTION. **809B.7 Substitution of assets.**

17 Upon the state's motion following conviction, the court
18 may order the forfeiture of substitute property owned by the
19 defendant up to the value of unreachable property that is
20 beyond the court's jurisdiction or cannot be located through
21 due diligence only if the state proves by a preponderance of
22 the evidence that the defendant intentionally transferred,
23 sold, or deposited property with a third party to avoid the
24 court's jurisdiction.

25 Sec. 8. NEW SECTION. **809B.8 No additional remedies.**

26 The state shall not seek personal money judgments or other
27 remedies not provided for in this chapter.

28 Sec. 9. NEW SECTION. **809B.9 No joint-and-several liability.**

29 A defendant is not jointly and severally liable for
30 forfeiture awards owed by other defendants. When ownership is
31 unclear, a court may order each defendant to forfeit property
32 on a pro rata basis or by another means the court finds
33 equitable.

34 Sec. 10. NEW SECTION. **809B.10 Seizure of personal property**
35 **with process.**

1 At the request of the state at any time, a court may issue an
2 ex parte preliminary order to attach, seize, or secure personal
3 property for which forfeiture is sought and to provide for
4 custody of such property. Application, issuance, execution,
5 and return of any order are subject to this chapter or court
6 rules.

7 Sec. 11. NEW SECTION. 809B.11 Seizure of personal property
8 without process.

9 Personal property subject to forfeiture may be seized at any
10 time without a court order if any of the following apply:

11 1. The seizure of personal property is incident to a lawful
12 arrest or a search lawfully conducted.

13 2. The personal property subject to seizure has been the
14 subject of a prior judgment in favor of the state.

15 3. The state has probable cause to believe that the delay
16 occasioned by the necessity to obtain process would result in
17 the removal or destruction of the personal property and that
18 the personal property is forfeitable under this chapter.

19 Sec. 12. NEW SECTION. 809B.12 Seizure of real property with
20 process.

21 1. Seizure of real property requires a court order. A court
22 may issue an order to seize or secure real property for which
23 forfeiture is sought only after proper notice to the property
24 owner and an opportunity for a contested hearing to determine
25 the sufficiency of probable cause for the seizure.

26 2. This section does not prohibit the prosecuting authority
27 from seeking a lis pendens or restraining order to hinder the
28 sale or destruction of the real property.

29 3. Application, issuance, execution, and return of any
30 order are subject to this chapter or court rules.

31 Sec. 13. NEW SECTION. 809B.13 Receipt.

32 When property is seized, the law enforcement officer shall
33 give an itemized receipt to the person possessing the property,
34 or in the absence of a person, leave a receipt in the place
35 where the property was found, if reasonably possible.

1 Sec. 14. NEW SECTION. 809B.14 Title.

2 1. At the time of seizure or entry of a restraining order,
3 the state acquires provisional title to the seized property.
4 Provisional title authorizes the state to hold and protect the
5 property.

6 2. Title to the property vests with the state when the trier
7 of fact renders a final forfeiture verdict and relates back to
8 the time when the state acquired provisional title. However,
9 this title is subject to claims by third parties adjudicated
10 under this chapter.

11 Sec. 15. NEW SECTION. 809B.15 Pretrial replevin hearing.

12 1. Following the seizure of property, a defendant or
13 claimant has a right to a pretrial hearing to determine the
14 validity of the seizure.

15 2. The defendant or claimant may claim at any time prior
16 to sixty days before trial of the related criminal offense the
17 right to possession of property by motion to the court to issue
18 a writ of replevin.

19 3. The defendant or claimant shall file a motion
20 establishing the validity of the alleged interest in the
21 property.

22 4. The court shall hear the motion no more than thirty days
23 after the motion is filed.

24 5. The state shall file an answer showing probable cause
25 for the seizure, or cross motions, at least ten days before the
26 hearing.

27 6. Either party may, by agreement or for good cause,
28 move the court to delay the hearing for one extension of no
29 more than ten days. Any such motion may be supported by an
30 affidavit or other submission.

31 7. The court shall grant the motion if the court finds that
32 any of the following apply:

33 a. The final judgment will likely be that the state must
34 return the property to the claimant.

35 b. The property is not reasonably required to be held for

1 investigatory reasons.

2 *c.* The property is the only reasonable means for a defendant
3 to pay for legal representation in the forfeiture or criminal
4 proceeding. At the court's discretion under paragraph "b", the
5 court may order the return of funds or property sufficient to
6 obtain legal counsel but less than the total amount seized, and
7 require an accounting.

8 8. In lieu of ordering the issuance of the writ, the court
9 may order the state to give security or written assurance for
10 satisfaction of any judgment, including damages, that may be
11 rendered in the action, or order other relief as may be just.

12 Sec. 16. NEW SECTION. 809B.16 **Discovery.**

13 Discovery in a proceeding under this chapter is subject to
14 the rules of criminal procedure.

15 Sec. 17. NEW SECTION. 809B.17 **Trial proceedings.**

16 The litigation related to the forfeiture of property shall
17 be held in a single proceeding following the trial of the
18 related alleged criminal offense. The litigation of whether
19 property of less than ten thousand dollars in value shall be
20 forfeited shall be held before only a judge.

21 Sec. 18. NEW SECTION. 809B.18 **Proportionality hearing.**

22 1. At any time following determination by the trier of fact,
23 the defendant may petition the court to determine whether the
24 forfeiture is unconstitutionally excessive under the state or
25 federal constitution.

26 2. The defendant has the burden of establishing the
27 forfeiture is grossly disproportional to the seriousness of
28 the offense by a preponderance of the evidence at a hearing
29 conducted by the court without a jury.

30 3. In determining whether the forfeiture of an
31 instrumentality is unconstitutionally excessive, the court may
32 consider all relevant factors, including but not limited to all
33 of the following:

34 *a.* The seriousness of the offense and the offense's impact
35 on the community, including the duration of the activity and

1 the harm caused by the defendant.

2 *b.* The extent to which the defendant participated in the
3 offense.

4 *c.* The extent to which the property was used in committing
5 the offense.

6 *d.* The sentence imposed for committing the offense subject
7 to forfeiture.

8 *e.* Whether the offense was completed or attempted.

9 4. In determining the value of the instrumentality subject
10 to forfeiture, the court may consider relevant factors,
11 including but not limited to any of the following:

12 *a.* The fair market value of the property.

13 *b.* The value of the property to the defendant including
14 hardship to the defendant if the forfeiture is realized.

15 *c.* The hardship from the loss of a motor vehicle or other
16 property to the defendant's family members or others if the
17 property is forfeited.

18 5. The court shall not consider the value of the
19 instrumentality to the state in determining whether the
20 forfeiture of an instrumentality is constitutionally excessive.

21 Sec. 19. NEW SECTION. **809B.19 Secured interest.**

22 1. Property encumbered by a valid security interest or
23 subject to a lease or rental agreement is not subject to
24 forfeiture. A person claiming a security interest must
25 establish by a preponderance of the evidence the validity
26 of the perfected security interest, a lease, or a rental
27 agreement.

28 2. The prosecuting authority shall summarily return
29 property to the person with a valid security interest in the
30 property, to the lessor, or to the person who is renting out
31 the property.

32 3. If the person alleges a valid security interest or that
33 the property is subject to a lease or rental agreement but
34 the state seeks to proceed with the forfeiture against the
35 property, the state shall prove by a preponderance of the

1 evidence that the person had actual knowledge of the underlying
2 offense giving rise to the forfeiture.

3 Sec. 20. NEW SECTION. **809B.20 Innocent owner.**

4 1. The property of an innocent owner shall not be forfeited.
5 Whether a person is an innocent owner shall be determined in
6 accordance with this section.

7 2. A person who has an ownership interest in property
8 subject to forfeiture existing at the time the illegal conduct
9 giving rise to forfeiture occurred and who claims to be an
10 innocent owner has the burden of proving by a preponderance
11 of the evidence that the person has a legal right, title, or
12 interest in the property seized under this chapter.

13 3. If subsection 2 is satisfied and the state seeks to
14 proceed with the forfeiture against the property, the state
15 shall prove by a preponderance of the evidence that the person
16 had actual or constructive knowledge of the underlying offense
17 giving rise to the forfeiture.

18 4. A person who acquired an ownership interest in property
19 subject to forfeiture after the commission of an offense giving
20 rise to the forfeiture and who claims to be an innocent owner
21 has the burden of proving by a preponderance of the evidence
22 that the person has legal right, title, or interest in the
23 property seized under this chapter.

24 5. If subsection 4 is satisfied and the state seeks to
25 proceed with the forfeiture against the property, the state
26 shall prove by a preponderance of the evidence that at the time
27 the person acquired the property any of the following applied:

28 a. The person had actual or constructive knowledge that the
29 property was subject to forfeiture.

30 b. The person was not a bona fide purchaser without notice
31 of any defect in title and for valuable consideration.

32 6. If the state fails to meet the state's burden in
33 subsection 3 or 5, the court shall find that the person is an
34 innocent owner and shall order the state to relinquish all
35 claims of title to the property.

1 7. The suspect or convicted offender may invoke the right
2 against self-incrimination or the marital privilege during
3 the forfeiture-related stage of the prosecution. The trier
4 of fact at the hearing may draw an adverse inference from the
5 invocation of the right or privilege.

6 Sec. 21. NEW SECTION. **809B.21 Appeal.**

7 A party to forfeiture litigation may appeal the district
8 court's decision regarding the seizure, forfeiture, and
9 distribution of property under this chapter.

10 Sec. 22. NEW SECTION. **809B.22 Disposition of property and**
11 **proceeds.**

12 1. At any time when unclaimed property or contraband held
13 for evidentiary purposes is no longer needed for that purpose,
14 the court may order unclaimed property to be delivered to the
15 treasurer of state within thirty days, or, in the case of
16 contraband, be destroyed within thirty days.

17 2. If the forfeiture is granted, the court may order the
18 property be delivered to the treasurer of state within thirty
19 days.

20 3. Upon motion, the court may order that a portion of the
21 currency seized or proceeds from public auction be used to pay
22 reasonable nonpersonnel expenses of the seizure, storage, and
23 maintenance of custody of any forfeited items.

24 4. All abandoned property shall be delivered to the
25 treasurer of state within thirty days.

26 5. The treasurer of state shall dispose of all noncurrency
27 forfeited property at public auction. The auction proceeds and
28 forfeited currency shall first be used to pay all outstanding
29 recorded liens on the forfeited property, then to comply with
30 an order of the court to pay reasonable nonpersonnel expenses,
31 with all remaining funds to be deposited in the general fund
32 of the state.

33 Sec. 23. NEW SECTION. **809B.23 Prohibition on retaining**
34 **property — sale restrictions.**

35 A law enforcement agency shall not retain forfeited property

1 or sell forfeited property directly or indirectly to any
2 employee of the agency, to a person related by consanguinity or
3 affinity to an employee of the agency within the third degree,
4 or to another law enforcement agency.

5 Sec. 24. NEW SECTION. **809.24 Reporting.**

6 1. On an annual basis, each law enforcement agency shall
7 report to the department of revenue the following information
8 about seizures and forfeitures completed by the law enforcement
9 agency under state forfeiture law and federal forfeiture law:

10 *a.* The total number of seizures of currency.

11 *b.* The total number of seizures and the number of items in
12 each class of property seized including vehicles, houses, and
13 other types of property.

14 *c.* The market value of each class of property seized
15 including currency, vehicles, houses, and other types of
16 property.

17 *d.* The total number of occurrences of each class of offense
18 underlying the forfeitures including controlled substances,
19 driving while intoxicated, and other offenses.

20 2. The department of revenue may require that information
21 not specified in this section also be reported. The department
22 of revenue shall develop standard forms, processes, and
23 deadlines for electronic data entry for annual submission of
24 forfeiture data by law enforcement agencies.

25 3. Each law enforcement agency shall file with the
26 department of revenue the report required under subsection
27 1 for the law enforcement agency and the corresponding
28 prosecutor's office. The law enforcement agency shall
29 file separate reports for forfeitures completed under state
30 forfeiture law and federal forfeiture law. A report shall be
31 filed by a law enforcement agency even if the law enforcement
32 agency did not engage in seizures or forfeitures during the
33 reporting period. The department of revenue shall compile the
34 submissions and issue an aggregate report of all forfeitures
35 in the state.

1 4. By April 1 of each year, the department of revenue shall
2 make available on the department's internet site the reports
3 submitted by law enforcement agencies and the aggregate report
4 prepared by the department under subsection 3.

5 Sec. 25. NEW SECTION. **809B.25 Return of property, damages,**
6 **and costs.**

7 1. The law enforcement agency that holds the property shall
8 return property to the owner within a reasonable period of time
9 not to exceed five days after any of the following:

10 a. The court finds that the owner has a bona fide security
11 interest.

12 b. The court finds that the owner is an innocent owner.

13 c. The owner's acquittal of or the dismissal of the criminal
14 charge that is the basis of the forfeiture proceedings.

15 d. The disposal of the criminal charge that is the basis of
16 the forfeiture proceedings by nolle prosequi.

17 2. The law enforcement agency that holds the property is
18 responsible for any damages, storage fees, and related costs
19 applicable to property returned under subsection 1.

20 Sec. 26. NEW SECTION. **809B.26 Transfer of forfeitable**
21 **property to federal government.**

22 A law enforcement agency, joint task force of any kind,
23 or prosecuting authority shall not directly or indirectly
24 transfer or refer seized property to any federal agency unless
25 the seized property includes seized United States currency in
26 excess of fifty thousand dollars.

27 Sec. 27. NEW SECTION. **809B.27 Preemption.**

28 This chapter preempts laws by county, city, township, and
29 other tribal or local governments in the state which regulate
30 civil and criminal forfeiture.

31 Sec. 28. Section 80.39, subsection 1, Code 2017, is amended
32 to read as follows:

33 1. Personal property, except for motor vehicles subject to
34 sale pursuant to [section 321.89](#), and seizable property subject
35 to disposition pursuant to [chapter 809](#) ~~or 809A~~, which personal

1 property is found or seized by, turned in to, or otherwise
 2 lawfully comes into the possession of the department or a local
 3 law enforcement agency and which the department or agency does
 4 not own, shall be disposed of pursuant to [this section](#). If by
 5 examining the property the owner or lawful custodian of the
 6 property is known or can be readily ascertained, the department
 7 or agency shall notify the owner or custodian by certified mail
 8 directed to the owner's or custodian's last known address, as
 9 to the location of the property. If the identity or address of
 10 the owner cannot be determined, notice by one publication in a
 11 newspaper of general circulation in the area where the property
 12 was found is sufficient notice. A published notice may contain
 13 multiple items.

14 Sec. 29. Section 123.9, subsection 7, Code 2017, is amended
 15 by striking the subsection.

16 Sec. 30. NEW SECTION. **124.417 Forfeiture of property.**

17 Property involved in a violation under this chapter is
 18 subject to seizure and forfeiture pursuant to chapter 809B.

19 Sec. 31. NEW SECTION. **124A.6 Forfeiture of property.**

20 Property involved in a violation under this chapter is
 21 subject to seizure and forfeiture pursuant to chapter 809B.

22 Sec. 32. Section 321.232, subsection 3, Code 2017, is
 23 amended to read as follows:

24 3. A speed detection jamming device sold, operated, or
 25 possessed in violation of [subsection 1](#) may be seized by a peace
 26 officer and is subject to forfeiture as provided by [chapter 809](#)
 27 ~~or [809A](#)~~.

28 Sec. 33. Section 321J.4B, subsections 6, 9, and 10, Code
 29 2017, are amended to read as follows:

30 6. Upon conviction of the defendant for a second
 31 or subsequent violation of [subsection 2](#), paragraph "a",
 32 subparagraph (2), the court shall order, if the convicted
 33 person is the owner of the motor vehicle used in the commission
 34 of the offense, that that motor vehicle be seized and forfeited
 35 to the state pursuant to [chapters 809](#) and ~~[809A](#)~~ [809B](#).

1 9. Operating a motor vehicle on a street or highway in this
2 state in violation of an order of impoundment or immobilization
3 is a serious misdemeanor. A motor vehicle which is subject to
4 an order of impoundment or immobilization that is operated on a
5 street or highway in this state in violation of the order shall
6 be seized and forfeited to the state under [chapters 809](#) and
7 [809A 809B](#).

8 10. Once the period of impoundment or immobilization has
9 expired, the owner of the motor vehicle shall have thirty
10 days to claim the motor vehicle and pay all fees and charges
11 imposed under [this section](#). If the owner or the owner's
12 designee has not claimed the vehicle and paid all fees and
13 charges imposed under [this section](#) within seven days from the
14 date of expiration of the period, the clerk shall send written
15 notification to the motor vehicle owner, at the owner's last
16 known address, notifying the owner of the date of expiration of
17 the period of impoundment or immobilization and of the period
18 in which the motor vehicle must be claimed. If the motor
19 vehicle owner fails to claim the motor vehicle and pay all fees
20 and charges imposed within the thirty-day period, the motor
21 vehicle shall be forfeited to the state under [chapters 809](#) and
22 [809A 809B](#).

23 Sec. 34. Section 321J.4B, subsection 12, paragraph a,
24 subparagraph (2), Code 2017, is amended to read as follows:

25 (2) The holder of a security interest in a vehicle which
26 is impounded or immobilized pursuant to [this section](#) or
27 forfeited in the manner provided in [chapters 809](#) and ~~809A~~
28 [809B](#) shall be notified of the impoundment, immobilization,
29 or forfeiture within seventy-two hours of the seizure of the
30 vehicle and shall have the right to claim the motor vehicle
31 without payment of any fees or surcharges unless the value of
32 the vehicle exceeds the value of the security interest held by
33 the creditor.

34 Sec. 35. Section 321J.10, subsection 7, Code 2017, is
35 amended to read as follows:

1 7. Specimens obtained pursuant to warrants issued under
2 this section are not subject to disposition under [section 808.9](#)
3 or [chapter 809](#) or ~~809A~~ [809B](#).

4 Sec. 36. Section 455B.103, subsection 4, paragraph d,
5 subparagraph (2), Code 2017, is amended to read as follows:

6 (2) In a reasonable manner, and any property seized shall be
7 treated in accordance with the provisions of [chapters 808, 809,](#)
8 and ~~809A~~ [809B](#).

9 Sec. 37. Section 462A.14D, subsection 7, Code 2017, is
10 amended to read as follows:

11 7. Specimens obtained pursuant to warrants issued under
12 this section are not subject to disposition under [section 808.9](#)
13 or [chapter 809](#) or ~~809A~~ [809B](#).

14 Sec. 38. Section 706A.3, subsection 3, paragraphs d and e,
15 Code 2017, are amended to read as follows:

16 d. Ordering the payment of all reasonable costs and expenses
17 of the investigation and prosecution of any violation, civil
18 or criminal, including reasonable attorney fees in the trial
19 and appellate courts. Such payments received by the state,
20 by judgment, settlement, or otherwise, shall be considered
21 forfeited property and disposed of pursuant to ~~section 809A.17~~
22 [chapter 809B](#).

23 e. Ordering the forfeiture of any property subject to
24 forfeiture under ~~chapter 809A~~ [809B](#), pursuant to the provisions
25 and procedures of that chapter.

26 Sec. 39. Section 706A.3, subsection 4, Code 2017, is amended
27 to read as follows:

28 4. Relief under [subsection 3](#), paragraphs "e", "f", and
29 "g", shall not be granted in civil proceedings instituted
30 by an aggrieved person unless the prosecuting attorney has
31 instituted the proceedings or intervened. In any action under
32 this section brought by the state or in which the state has
33 intervened, the state may employ any of the powers of seizure
34 and restraint of property as are provided for forfeiture
35 actions under ~~chapter 809A~~ [809B](#), or as are provided for the

1 collection of taxes payable and past due, and whose collection
2 has been determined to be in jeopardy.

3 Sec. 40. Section 706B.2, subsection 4, Code 2017, is amended
4 to read as follows:

5 4. A person who is found guilty of a violation under this
6 section also may be charged with violations of [chapter 706A](#),
7 and property involved in a violation under [this chapter](#) is
8 subject to forfeiture under [chapter 809A 809B](#).

9 Sec. 41. Section 714.26, subsection 4, paragraph a, Code
10 2017, is amended to read as follows:

11 a. All seized personal property shall be disposed of ~~in~~
12 ~~accordance with [section 809.5](#) or as provided in paragraph "b" or~~
13 subject to seizure and forfeiture pursuant to chapter 809B.

14 Sec. 42. Section 715A.8, subsection 6, Code 2017, is amended
15 to read as follows:

16 6. Any real or personal property obtained by a person as
17 a result of a violation of [this section](#), including but not
18 limited to any money, interest, security, claim, contractual
19 right, or financial instrument that is in the possession of the
20 person, shall be subject to seizure and forfeiture pursuant to
21 ~~chapter 809A~~ [809B](#). A victim injured by a violation of this
22 section, or a financial institution that has indemnified a
23 victim injured by a violation of [this section](#), may file a claim
24 as an interest holder pursuant to ~~[section 809A.11](#)~~ [809B.15](#) for
25 payment of damages suffered by the victim including costs of
26 recovery and reasonable attorney fees.

27 Sec. 43. Section 716A.7, Code 2017, is amended to read as
28 follows:

29 **716A.7 Forfeitures for violations of chapter.**

30 All property, including all income or proceeds earned but
31 not yet received from a third party as a result of a violation
32 of [this chapter](#), used in connection with a violation of this
33 chapter, known by the owner thereof to have been used in
34 violation of [this chapter](#), shall be subject to seizure and
35 forfeiture pursuant to [chapter 809A 809B](#).

1 Sec. 44. Section 724.26, subsection 4, Code 2017, is amended
2 to read as follows:

3 4. Except as provided in ~~section 809A.17, subsection 5,~~
4 ~~paragraph "b"~~ chapter 809B, a court that issues an order or
5 that enters a judgment of conviction described in subsection
6 2 and that finds the subject of the order or conviction to be
7 in possession of any firearm, offensive weapon, or ammunition
8 shall order that such firearm, offensive weapon, or ammunition
9 be sold or transferred by a date certain to the custody of a
10 qualified person in this state, as determined by the court.
11 The qualified person must be able to lawfully possess such
12 firearm, offensive weapon, or ammunition in this state. If
13 the court is unable to identify a qualified person to receive
14 such firearm, offensive weapon, or ammunition, the court
15 shall order that the firearm, offensive weapon, or ammunition
16 be transferred by a date certain to the county sheriff or
17 a local law enforcement agency designated by the court for
18 safekeeping until a qualified person is identified to receive
19 the firearm, offensive weapon, or ammunition, until such order
20 is no longer in effect, until such conviction is vacated, or
21 until the person's rights have been restored in accordance
22 with section 724.27. If the firearm, offensive weapon, or
23 ammunition is to be transferred to the sheriff's office or a
24 local law enforcement agency, the court shall assess the person
25 the reasonable cost of storing the firearm, offensive weapon,
26 or ammunition, payable to the county sheriff or the local law
27 enforcement agency.

28 Sec. 45. Section 809.5, subsection 1, paragraph f,
29 subparagraph (1), Code 2017, is amended to read as follows:

30 (1) If the aggregate fair market value of the property is
31 greater than five hundred dollars, forfeiture proceedings shall
32 be initiated pursuant to the provisions of chapter 809A 809B.
33 If the court does not order the property forfeited to the state
34 in the forfeiture proceedings pursuant to chapter 809A 809B,
35 the seizing agency shall become the owner of the property and

1 may dispose of it in any reasonable manner.

2 Sec. 46. Section 809.12A, Code 2017, is amended to read as
3 follows:

4 **809.12A Appeals.**

5 An appeal from a denial of an application for the return
6 of seized property or from an order for the return of seized
7 property shall be made within thirty days after the entry of
8 a judgment order. The appellant, other than the state, shall
9 post a bond of a reasonable amount as the court may fix and
10 approve, conditioned to pay all costs of the proceedings if the
11 appellant is unsuccessful on appeal. The appellant, other than
12 the state, may be required to post a supersedeas bond or other
13 security, as the court finds to be reasonable, in order to stay
14 the operation of a forfeiture order under ~~section 809A.16~~
15 chapter 809B.

16 Sec. 47. Section 809.15, Code 2017, is amended to read as
17 follows:

18 **809.15 Combining proceedings.**

19 In cases involving seized property and property subject to
20 forfeiture pursuant to ~~section 809A.4~~ 809B.3, the court may
21 order that the proceedings be combined for purposes of this
22 chapter.

23 Sec. 48. REPEAL. Chapter 809A, Code 2017, is repealed.

24 Sec. 49. APPLICABILITY. This Act applies to forfeiture
25 proceedings that arise on or after or that are pending as of
26 the effective date of this Act.

27 **EXPLANATION**

28 The inclusion of this explanation does not constitute agreement with
29 the explanation's substance by the members of the general assembly.

30 This bill relates to criminal asset forfeiture.

31 Asset forfeiture is a process by which contraband and
32 proceeds or instrumentalities related to criminal activity
33 may be seized by the state and sold. Under current law,
34 asset forfeiture is governed by Code chapter 809A. The bill
35 repeals Code chapter 809A and replaces it with new Code chapter

1 809B. Currently under Code chapter 809A, a conviction for a
2 criminal offense is not required for an asset to be subject to
3 forfeiture, and forfeiture need not be expressly authorized
4 as a penalty in the criminal statute. The bill provides that
5 property is not subject to forfeiture until a person has
6 been convicted of a felony for which forfeiture is expressly
7 authorized as a penalty.

8 Under current law, forfeiture is provided as a remedy for
9 certain driving while intoxicated offenses and for violations
10 of Code chapters 706B (money laundering), 715A (forgery
11 and related fraudulent criminal acts), and 716A (electronic
12 mail). The bill provides that forfeiture is also a remedy for
13 violations of Code chapters 124 (controlled substances) and
14 124A (imitation controlled substances) and Code section 714.26
15 (intellectual property counterfeiting).

16 The bill exempts homestead real property, motor vehicles of
17 less than \$10,000 in market value, and United States currency
18 totaling \$200 or less from forfeiture.

19 Current law requires the state to prove that property is
20 subject to forfeiture by a preponderance of the evidence. The
21 bill requires the state to prove, by clear and convincing
22 evidence, that the property is forfeitable.

23 The bill provides that a defendant is not jointly and
24 severally liable for forfeiture awards owed by other
25 defendants.

26 The bill provides for a proportionality hearing, where
27 the defendant may petition the court that the forfeiture is
28 unconstitutionally excessive.

29 The bill requires law enforcement agencies to provide annual
30 reports to the department of revenue regarding forfeitures
31 completed by the law enforcement agencies. The bill requires
32 the department of revenue to prepare an annual report
33 aggregating the results and to post the aggregate report on the
34 department's internet site.

35 The bill provides that new Code chapter 809B preempts laws by

1 county, city, township, and other tribal and local governments
2 in the state which regulate civil and criminal forfeiture.

3 The bill makes conforming changes relating to the repeal of
4 Code chapter 809A and new Code chapter 809B.

5 The bill applies to forfeiture proceedings that arise on or
6 after or that are pending as of the effective date of the bill.